Eng Jiun Wei & Anor v Lee Cheong Sim & Ors

HIGH COURT (JOHOR BAHRU) - CIVIL APPEAL NO 12–109 OF 2003 (4)
AZAHAR MOHAMED JC
5 OCTOBER 2004

Damages — Fatal accident — Appropriate multiplier — Sessions court judge given both respondents 16 years of purchase — Whether appropriate — Civil Law Act 1956 s 7(3)

Damages — Fatal accident — Dependency claim — Sessions court judge awarded first respondent RM600 per month and second respondent RM500 per month — Whether appropriate — Things court should take into account — Civil Law Act 1956 s 7(3), proviso (c)

This was the defendants' (appellants) appeal against the judgment of the learned sessions court judge, the plaintiffs' claim being a dependency claim under s 7(3) of the Civil Law Act 1956 ('the Act'). The two issues were: (1) the number of years' purchase and (2) the amount of money given to the respondents by way of dependency per month. The learned sessions court judge had given both the respondents 16 years of purchase and awarded the first respondent RM600 per month and the second respondent RM500 per month.

Held, allowing the appeal in part:

(1) The court was bound by the ruling of the Supreme Court in the case of *Chan Chin Ming & Anor v Lim Yoke Eng* [1994] 3 MLJ 233. where the majority of the Supreme Court had elaborated extensively as to why the court could reduce the multiplier from 16 to a figure it felt was reasonable and appropriate, notwithstanding that ss 7 and 28A of the Act used the phrase 'shall be 16' when fixing the multiplier (see para 5).

(2) The court agreed with the learned sessions court judge. After taking into account the contingencies and circumstances as well as the likelihood of both the deceased marrying, the court agreed with the contention of learned counsel for the appellants that the number of years' purchase should be reduced and the court reduced it to 12 years for the first respondent and to 11 years for the second respondent which was reasonable and appropriate in this case (see para 8).

(2) A plaintiff can only claim in such a case for financial loss which he or she sustained as a dependant and not in any other ways. The first respondent admitted that the deceased stayed with her and the deceased had his meal at home twice a day. Proviso (c) to s 7(3)(iv) of the Act provides that in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages, the court shall take into account any dimunition of any such amount by such sum as is proved or admitted to be the living expenses of the person deceased at the time of his death. Having regard to her admission the sum of RM600 awarded by

the court below as the monthly net loss of support was reduced to RM480 per month which was a fair and appropriate sum in the circumstances of the case (see para 3).

(3) The second respondent said that the deceased stayed with her and that the deceased had her meal twice a day at home. For the reasons stated earlier, the sum of RM500 per month awarded by the court below as the monthly net loss of support be reduced to RM380 per month which was a fair and reasonable figure (see para 4).

[**Bahasa Malaysia summary**

Ini merupakan rayuan defendan-defendan (perayu-perayu) terhadap penghakiman hakim mahkamah sesyen yang arif, tuntutan plaintif-plaintif adalah tuntutan wilayah tanggungan di bawah s 7(3) Akta Undang-Undang Sivil 1956 ('Akta itu'). Dua isu adalah: (1) jumlah tahun perolehan dan (2) jumlah wang yang diaward kepada responden-responden sebagai tanggungan sebulan. Hakim mahkamah sesyen yang arif telah memberi kedua-dua responden 16 tahun perolehan dan mengawardkan responden pertama RM600 sebulan dan responden kedua RM500 sebulan.

Diputuskan, membenarkan sebahagian rayuan itu:

(1) Mahkamah ini terikat oleh penghakiman Mahkamah Agung di dalam kes *Chan Chin Ming & Anor v Lim Yoke Eng* [1994] 3 MLJ 233, di mana majority Mahkamah Agung telah membincangkan dengan mendalam sebab-sebab mahkamah dapat mengurangkan pendarab daripada 16 kepada jumlah kurang yang difikirkan mahkamah sesuai, walaupun ss 7 dan 28A Akta itu menggunakan kata-kata 'shall be 16' semasa menentukan pendarab (lihat perenggan 5).

(2) Mahkamah bersetuju dengan hakim mahkamah sesyen yang arif. Setelah mempertimbangkan kontingensi dan keadaan-keadaan dan kemungkinan kedua-dua simati berkahwin, mahkamah bersetuju dengan hujahan peguam perayu-perayu yang arif bahawa jumlah tahun perolehan patut dikurangkan dan mahkamah mengurangkannya kepada 12 tahun untuk responden pertama dan 11 tahun untuk responden kedua, sesuai di dalam kes ini (lihat perenggan 8).

(3) Seorang plaintif hanya dapat menuntut di dalam kes untuk kerugian kewangan di mana beliau menanggung rugi sebagai tanggungan dan bukan di dalam keadaan lain. Responden pertama mengaku bahawa simati menghuni dengan beliau dan makan di rumah dua kali sehari. Proviso (c) kepada s 7(3)(iv) Akta itu memperuntukkan bahawa di dalam mentaksir kerugian pendapatan untuk sebarang tempoh selepas kematian seseorang di mana pendapatan itu memberi kepada atau menyumbang kepada gantu rugi, mahkamah mesti mempertimbangkan segala pengurangan jumlah itu dengan jumlah yang dibuktikan atau diakui menjadi perbelanjaan kehidupan simati pada masa kematian beliau. Mempertimbangkan pengakuan

responden pertama, jumlah RM600 yang diaward oleh mahkamah sesyen sebagai kerugian bulanan bersih saraan dikurangkan kepada RM480 sebulan yang merupakan jumlah yang adil dan sesuai di dalam keadaan kes (lihat perenggan 3).

(4) Responden kedua berkata bahawa simati menghuni dengan beliau dan bahawa simati makan di rumah dua kali sehari. Berdasarkan alasan-alasan yang dikatakan, jumlah RM500 sebulan yang diawardkan oleh mahkamah sesyen sebagai kerugian saran bulanan bersih dikurangkan kepada RM380 sebulan, jumlah yang adil dan munasabah (lihat perenggan 4).]

Notes

For cases on appropriate multiplier, see 6 Mallal's Digest (4th Ed 2002 Reissue) paras 307-310.

For cases on dependency claims, see 6 Mallal's Digest (4th Ed 2002 Reissue) paras 329-360.

Cases referred to

Chan Chin Meng & Anor v Lim Yok Eng [1994] 3 MLJ 233 (folld)

Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal [2004] 1 MLJ 525 (refd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 417, [2001] 2 AMR 1905 (refd)

Legislation referred to

Civil Law Act 1956 s 7, (3), (iv) proviso (c), 28

Lai Kuan Jean (Taye & Co) for the applicants.
RK Menon (RK Menon) for the respondents.

Azahar Mohamed JC:

[1] This is the defendants' ('the appellants') appeal against the judgment of the learned session court judge given on 21 January 2003 in a running down case in which the first plaintiff ('the first respondent') Mdm Soo Ah Koon had lost her 19 year old son while the second plaintiff (the second respondent) Mdm Swee Ha @ Chu Swee Ha had lost her 21 year old daughter; their claim being a dependency claim under s 7(3) of the Civil Law Act 1956 ('the Act').

[2] In this appeal, the appellants are only appealing against two issues, namely:

i) the number of years' purchase; and

ii) the amount of money given to the respondents by way of dependency per month.

[3] I will first deal with the second issue ie the value of the dependency (the multiplicand). The matter arose in this way. In the case of the first respondent ie the mother of deceased, Lee Sing Lang, the learned session court judge awarded her RM600 per month for dependency. I am satisfied from a careful scrutiny of the evidence adduced that the deceased was earning RM1,100 per month. The first respondent testified that her husband had deserted her. Now, loss of support is for financial loss sustained by a dependant, following the case of *Chan Chin Meng & Anor v Lim Yok Eng* [1994] 3 MLJ 233. A plaintiff can only claim in such a case for financial loss which he or she sustained as a dependant and not in any other ways. In her evidence, the first respondent admitted that the deceased stayed with her and the deceased had his meal at home twice a day. Proviso (c) to s 7(3)(iv) of the Act provides that in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages, the court shall take into account any dimunition of any such amount by such sum as is proved or admitted to be the living expenses of the person deceased at the time of his death. In my view having regards to her admission the sum of RM600 awarded by the court below as the monthly net loss of support be reduced to RM480 per month which I think is a fair and appropriate sum in the circumstances of the case.

[4] With regard to the second respondent ie the mother of deceased Ng Sook Kheng, the learned session court judge awarded her dependency in the sum of RM500 per month. From the evidence adduced, I have no reason to disagree with the findings of the learned session court judge that the deceased was earning at least RM880 per month. The first respondent also testified that her husband had since deserted her. She also said that the deceased stayed with her and that the deceased had her meal twice a day at home. For the reasons I have stated earlier, the sum of RM500 per month awarded by the court below as the monthly net loss of support be reduced to RM380 per month which I think is a fair and reasonable figure.

[5] I now turn to consider the issue of the number of years' purchase, the multiplier. The court below had given both the respondents 16 years of purchase. I must say that in the light of the compelling reasoning of the Court of Appeal in *Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal* [2004] 1 MLJ 525, I have some difficulties in deciding on this issue but after some anxious consideration, it is my respectful view that I am bound by the ruling of the Supreme Court in the case of *Chan Chin Ming & Anor v Lim Yoke Eng*. It will be remembered that a majority of the Supreme Court in that case had elaborated extensively as to why the court could reduce the multiplier from 16 to a figure it felt was reasonable and appropriate, notwithstanding ss 7 and 28A of the Act used the phrase 'shall be 16' when fixing the multiplier. In this regard, his Lordship Abdul Malek Ahmad FCJ (as his Lordship then

was) speaking for the Federal Court in the case of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417, [2001] 2 AMR 1905 reminded us of the principle of stare decisis. His Lordship's statement of the law on the doctrine of binding precedent is at p 449:

> All things considered, we would venture to say that this court may have fallen into error in granting leave on the second question. Especially so when it has been decided in *Co-operative Central Bank Ltd (In receivership) v Feyen Development Sdn Bhd* [1997] 2 MLJ 829 that it was necessary for each lower tier to accept loyally the decision of the higher tiers and chaotic consequences would follow should the lower tier fail in this duty. It was therefore not open to an intermediate court of appeal, such as the Court of Appeal in this country, to disregard a judgment of a final court of appeal such as the Federal Court on the ground that it was given per incuriam.

[6] The Court of Appeal in *Ibrahim*'s case in declining to follow *Chan Chin Ming*'s case**,** held that court has no discretion to alter the statutory multiplier which shall be 16 according to proviso (d) to s 7(3)(iv) of the Act. On the other hand, as I have said a moment ago, the Supreme Court in *Chan Chin Ming*'s case ruled that the court can reduce the multiplier from 16 to a figure which is reasonable and appropriate. Nevertheless, I think it is important to re-emphasize that the majority in *Chan Chin Ming*'s case did not say there must be a reduction of the multiplier in every case. The court would have to direct its mind, inter alia, to the likelihood of the deceased marrying in determining the multiplier to be applied.

[7] In this case, the first respondent was aged 40 at the time of death of her 19 year old son whilst the second respondent was aged 49 at the time of the death of her 21 year old daughter. In his judgment the learned session court judge at p 68 of the appeal record said:

> … keterangan yang diterima jelas menunjukkan tidak ada kemungkinan bagi kedua-dua si mati ini akan berkahwin dalam masa yang terdekat semasa hayat mereka. Sebaliknya keterangan menunjukkan dengan jelas bahawa kedua-dua ibu adalah terlalu bergantung kepada anak-anak mereka iaitu kedua-dua si mati yang berkenaan.

[8] I have no reason to disagree with this finding made by the learned session court judge. After taking into ac

[9] count the contingencies and circumstances as well as the likelihood of both the deceased marrying, I agree with the contention of learned counsel for the appellants that the number of years' purchase should be reduced and I hereby reduce it to 12 years for the first respondent and to 11 years for the second respondent which to my mind is reasonable and appropriate in this case.

[10] In the circumstances, I would allow this appeal in part to reflect my conclusions as I have stated above on the issues arising for decision. By consent I made no order as to costs in this appeal.

Appeal allowed in part.

Reported by Chew Phye Ken